

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed March 28, 2005. At the time of the Office Action, Claims 1-39 were pending in this Application. The Office Action rejected Claims 1-39. In order to advance prosecution of this case, Applicants amend Claims 1, 10-11, 20-21, 30, 33, 35-36 and 38. Applicants cancel Claims 4-6, 9, 14-16, 19, 24-26, 29, 31-32, 37 and 39 without prejudice or disclaimer. Applicants add new Claims 40-42. Applicants respectfully request reconsideration and favorable action in this case.

Non-Statutory Double Patenting Rejection

The Office Action rejects Claims 31-35 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 31, 33, 35, and 36 of U.S. Patent No. 6,792,092 (the "'092 Patent"). Applicants respectfully traverse these rejections. Applicants have canceled Claims 31 and 32 without prejudice or disclaimer.

The Office Action states that:

Although the conflicting claims are not identical, they are not patentably distinct from each other because both instant application and patent '092 claim the same subject matter. Claim 31 of instant application corresponds to claim 31 of patent '092; claims 32 and 35 of instant application correspond to claim 33 of patent '092; and claims 33 and 34 of instant application correspond to claims 35 and 36 of patent '092, respectively. The common subject matter is, with regarding claim 31, a method for independent participant control of audio properties for a multiparty communication connection; and with regarding claims 32-35, a conference bridge comprising an input buffer, a cross-connect, a conference stream output generator and an output buffer.

Office Action, pages 2-3. Applicants respectfully disagree. An obviousness-type nonstatutory double patenting rejection includes a determination that a claim in the application defines an invention that is merely an obvious variation of a patented claim. *See* M.P.E.P. § 804(II)(B)(1). Merely having subject matter that is common is not dispositive on the issue.

Applicants respectfully submit that the Claims 33-35 of the present Application are nonobvious over Claims 33, 35 and 36 of the '092 Patent. For example, Claim 33 of the present Application, amended to include elements previously recited in canceled Claim 32, is

directed to a conference bridge and includes a conference stream output generator for each participant operable to "at least substantially eliminate audio streams received from the cross-connect for other participants engaged in a sidebar from which the participant is excluded." This element is not an obvious variation of Claims 33, 35 or any other claim of the '092 Patent. Claims 34 and 35 of the present Application each depends from Claim 33 and therefore includes the elements discussed above that are nonobvious over Claims 33 and 35 of the '092 Patent. Claim 36 of the '092 Patent does not include the indicated elements of Claim 33 of the present Application. Therefore, Claims 34 and 35 of the present Application include elements that are nonobvious over Claims 33, 35 and 36 of the '092 Patent. For at least these reasons, Applicants respectfully request that the rejections of Claims 33-35 under the judicially created doctrine of obviousness-type double patenting be withdrawn.

Section 102 Rejections

The Office Action rejects Claims 1-32 and 36-39 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,404,873 issued to Beyda et al. ("*Beyda*"). Applicants respectfully traverse these rejections for the reasons stated below.

Claim 1 recites "wherein the conference output streams comprise stereo streams" and "providing the sidebar by altering the spatial positioning of voice streams generated by the set of remaining participants relative to the voice stream of the other participant to the sidebar in conference output streams generated for the first and second participants." These elements previously appeared in original Claim 9. In addition, Claims 11, 21, 36 and 38 recite similar elements. The Office Action cites to column 6, line 53 through column 7, line 24 of *Beyda* as disclosing these elements. *See* Office Action, page 5. However, neither this nor any other portion of *Beyda* discloses stereo conference output streams or altering spatial positioning of voice streams relative to another voice stream. Therefore, Applicants respectfully submit that Claims 1, 11, 21, 36 and 38 are patentable over the cited art used in the rejection and request that the rejections of Claim 1, 11, 21, 36 and 38 be withdrawn.

Claims 2-3, 7-8 and 10 each depends, either directly or indirectly, from Claim 1; Claims 12-13, 17-18 and 20 each depends, either directly or indirectly, from Claim 11; and Claims 22-23, 27-28 and 30 each depends, either directly or indirectly, from Claim 21.

Claims 1, 11 and 21 are shown above to be allowable. Thus, for at least the reasons discussed above with respect to Claims 1, 11 and 21, Applicants respectfully request that the rejections of Claims 2-3, 7-8, 10, 12-13, 17-18, 20, 22-23, 27-28 and 30 be withdrawn.

New Claims

Applicants add new Claims 40-42. Claims 40-42 contain no new matter and are fully supported by the specification as filed.

Claim 40 recites providing the sidebar by "substantially eliminating voice streams generated by the set of remaining participants from conference output streams generated for the first and second participants." This element previously appeared in original Claim 5. The Office Action cites to column 6, line 53 through column 7, line 24 of *Beyda* as disclosing these elements. *See* Office Action, page 5. However, neither this nor any other portion of *Beyda* discloses substantially eliminating voice streams generated by a set of remaining participants from conference output streams generated for first and second participants in a sidebar. In contrast, *Beyda* discloses mixing first voice data 42 from a main conference call with second voice data 38 from a first subconference call and transmitting in step 68 the mixed first and second voice data over the first subconference call. *See Beyda*, col. 6, lines 61-67. *Beyda* states that this mixing of the first and second voice data "enables participants in the subconference call to listen to main conference call conversations" *Id.* at col. 6, line 67 – col. 7, line 2. *Beyda* does not disclose, teach or suggest substantially eliminating voice streams generated by the set of remaining participants from conference output streams generated for the first and second participants. Thus, Applicants respectfully request allowance of Claim 40. In addition, Claim 41 depends from Claim 40; thus, Applicants respectfully request allowance of Claim 40.

Claim 42 recites "wherein the conference output streams comprise monaural streams and further comprising providing the sidebar by attenuating voice streams generated by the set of remaining participants in conference output streams generated for the first and second participants." These elements previously appeared in original Claim 4. The Office Action cites to column 7, lines 1-2 of *Beyda* as disclosing these elements. *See* Office Action, page 4. However, neither this nor any other portion of *Beyda* discloses monaural conference output

streams or attenuating voice streams generated by a set of remaining participants in conference output streams generated for first and second participants in a sidebar. This cited portion of *Beyda* merely discloses mixing first and second voice data to enable participants in a subconference call to listen to main conference call conversations. *See Beyda*, col. 6, line 67 – col. 7, line 2. *Beyda* does not disclose, teach or suggest wherein the conference output streams comprise monaural streams and further comprising providing the sidebar by attenuating voice streams generated by the set of remaining participants in conference output streams generated for the first and second participants. Thus, Applicants respectfully request allowance of Claim 42.

Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants have included a check for \$200.00 for the fee for one new independent claim. Applicants believe no additional fee is due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of **Baker Botts L.L.P.**

Respectfully submitted,

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